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HAROLD B. WILLEY, C

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1952

No. [redacted]705 36

IN THE MATTER

of

THE FLORIDA EAST COAST RAILWAY CO.,
Debtor.

J. BRYSON AIRD and BANK OF THE MANHATTAN COMPANY, Successor Mortgage Trustees,
Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Dated: April 6, 1953.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 670

IN THE MATTER

of

FLORIDA EAST COAST RAILWAY CO.,

Debtor,

J. BRYSON AIRD AND BANK OF THE MANHATTAN COMPANY,
Successor Mortgage Trustees,

Petitioners,

v.

ATLANTIC COAST LINE RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, J. Bryson Aird and Bank of the Manhattan Company as Successor Mortgage Trustees of the First and Refunding bonds of Florida East Coast Railway Company, respectfully pray for a writ of certiorari to the Court of Appeals for the Fifth Circuit to review a judg-

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ment, entered in this cause on January 19, 1953, re
an order of the District Court for the Southern Di
Florida disapproving a plan of reorganization for
East Coast Railway Company under Section 77
Bankruptcy Act.

The record, consisting of six volumes numbered
inclusive, is now before this Court upon petition
tiorari by St. Joe Paper Company, et al., No. 670,
Term 1952. This record is made a part hereof by re
in support of this petition.

Jurisdiction to Review

The jurisdiction of this Court is invoked under
United States Code, Section 1254.

Opinions Below

The opinion of the Court of Appeals is rep
Atlantic Coast Line Railroad Company v. *St. Jo*
Company 201 F. (2d) 325; R. Vol. II, 717; the op
the District Court is reported in In re *Florida Ea*
Railway Company, 103 F. Supp. 825; R. Vol. I,
decisions of the Interstate Commerce Commission
ing the 1951 plan here under consideration are rep
Florida East Coast Railway Company Reorganiza
I. C. C. 81 and 282 I. C. C. 195; R. Vol. I.

The earlier decisions relating to the 1947 plan
ported as follows: opinion of the Court of Appe
lantic Coast Line R. Co. v. *St. Joe Paper Company*
(2d) 538; opinion of the District Court, In re *Flor*
Coast Railway Company, 81 F. Supp. 926; opinio
Interstate Commerce Commission, *Florida East Co*
way Company Reorganization, 267 I. C. C. 295 and

Questions Presented

1. Does Section 77 authorize the Interstate Commerce Commission to "force" a merger of a debtor railroad with another railroad over the opposition of the equitable owners of the debtor?

2. If Section 77 be construed to authorize the "forcing" of a transfer of the debtor's property to a third party for less than the fair value of such property, is this in violation of the Fifth Amendment?

3. May a Court of Appeals, in overturning by a 3 to 2 majority the decision of a district judge under Section 77(e) of the Bankruptcy Act following lengthy hearings, ignore that Judge's detailed findings and conclusions as to the unfairness and inequity of a transfer of the debtor railroad to a competitor road (such transfer being "forced" against the opposition of the debtor's equitable owners) and substitute its own unexplained judgment thereon, the rationale of its lack of explanation being that "It will, therefore, serve no useful purpose for us to * * * discuss * * * the findings made and reasons given * * * in the lengthy opinion of the trial judge * * * to determine our agreement or disagreement with each of them in turn"?

Statement

Summary of Proceedings

In Section 77 proceedings begun herein in 1941 (succeeding an equity receivership) the Interstate Commerce Commission at first proposed internal reorganization plans which failed of court approval. Thereupon a plan of "forced" merger (i.e. against the opposition of the debtor's First and Refunding bondholders who are its equitable owners) with the Atlantic Coast Line was proposed by the Commission (by divided vote) in 1947 and was condemned as unfair and inequitable by the District Court (*In re Florida East Coast Railway Company*, 81 F. Supp.

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926) and this condemnation was upheld by the Court of Appeals (*Atlantic Coast Line R. Co.* v. *St. Joe Paper Company,* 139 F. (2d) 538). Substantially the same plan (though actually less favorable to the bondholders) was thereafter again certified by the Commission (again by divided vote) to the District Court over the objections of the debtor's bondholders, and was again condemned by that Court (*In re Florida East Coast Railway Co.,* 103 F. Supp. 825) on numerous grounds including those of fairness and equity. The Court of Appeals has (by divided vote) reversed the District Court (*Atlantic Coast Line Railroad Company* v. *St. Joe Paper Company,* 201 F. (2d) 325), and this petition is for a review of that reversal.

The position of your Petitioners

Your petitioners are the Successor Trustees of the debtor's First and Refunding Mortgage Bonds outstanding in the aggregate principal amount of $45,000,000 and with interest in excess of $35,000,000 in default. The Interstate Commerce Commission and the Courts have consistently declared (and there is no denial) that the holders of these bonds are the equitable owners of the debtor.

Your petitioners are convinced that the plan of forced merger of the debtor with the Atlantic Coast Line Railroad is grossly unfair and inequitable to the bondholders as a class, a violation of applicable legal standards, contrary to the provisions of Section 77, a deprivation of the bondholders' property without due process of law and in violation of the Fifth Amendment.

Holders of approximately 70% of the bonds actively appeared before Judge Strum in the District Court opposing this forced merger plan, contending among other objections that the value of the debtor's property is far in excess of the compensation offered under the plan. No bondholders appeared before Judge Strum in support of the plan except the now dissolved Deposit Committee (termed by Judge Hutcheson the "small but faithful ally

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of the Atlantic Coast Line") representing less than 1% of the bonds (*Atlantic Coast Line R. Co.* v. *St. Joe Paper Co.*, 179 F. (2d) 538 at 539).

Your petitioners have consistently opposed the present plan, their considered opinion being that its effect is to take the debtor's property from the bondholders as a class without fair compensation and without due process of law. This is your petitioners' own independent conclusion, and is not based (as Atlantic Coast Line counsel have insinuated) upon a policy of blind subservience to the wishes of a majority of the bonds. Your petitioners have, however, no problem of weighing the position of the majority against that of the minority—there is no minority of bondholders—nor to your petitioners' knowledge even a single bondholder —now actively supporting the plan.

Under such circumstances your petitioners deem it their duty to draw to this Court's attention, by the filing of this petition, their support of the several petitions filed or to be filed by bondholders' groups praying for a review of the ruling of the Court of Appeals.

Reasons Relied on for the Allowance of the Writ

The Court of Appeals Judges and the Interstate Commerce Commissioners are divided upon the questions here presented, which are of such importance as to require decision by this Court.

Respectfully submitted,

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